

UNITED STATES DISTRICT COURT

for the

District of New Jersey

Division

Case No. _____

(to be filled in by the Clerk's Office)

Steve Cunningham

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Jury Trial: (check one) ☒ Yes ☐ No

Heraeus Incorporated

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Steve
Street Address	Cunningham
City and County	Ewing, Mercer
State and Zip Code	N.J 08618
Telephone Number	609-422-7700
E-mail Address	Cunninghams@live.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name Heraeus Incorporated

Job or Title *(if known)*

Street Address

770 Township Line Rd, Suite 300

City and County

Yardley, Bucks

State and Zip Code

P.A 19067

Telephone Number

215-944-9024

E-mail Address *(if known)*

Defendant No. 2

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

Defendant No. 3

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

Defendant No. 4

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

☒ Federal question

☒ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

Federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA")

Retaliation in violations of the FLSA U.S.C. §215(a)(3)

Whistleblower Protection Act U.S.C. §5851(b)(4)

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* Steve Cunningham, is a citizen of the State of *(name)* New Jersey.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____. Or is a citizen of _____.

(foreign nation) _____

b. If the defendant is a corporation

The defendant, (name) Heraeus Incorporated, is incorporated under the laws of the State of (name) Pennsylvania, and has its principal place of business in the State of (name) Pennsylvania.
Or is incorporated under the laws of (foreign nation) Germany, and has its principal place of business in (name) Hanau.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

Complaint for declaratory relief and damages severely in excess of \$75,000 for violations of the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 et seq. failure to pay overtime, retaliation under the FLSA, violation of the Whistleblower Protection Act U.S.C. §5851(b)(4), tortious termination in violation of public policy, intentional infliction of emotional stress, negligent infliction of emotional stress, back pay, forward pay, and loss of benefits.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

1. Plaintiff was employed by defendant to be compensated at a hourly rate and was classified as a non-exempt employee.
2. A supervisor instituted policy that awarded plaintiff compensatory time in lieu of paid overtime for hours work in excess of 40 hours in a single work week. This policy violates page 25 of defendant employee handbook and on information or believe this policy was instituted for budgetary reasons. Plaintiff was told on more than one occasion to only to record 40 hours on his time sheet.
3. Plaintiff was made aware that this policy is not new; it has been the method of operation for defendant for more than a year, in addition upper management (the VP of Human Resource) and payroll are aware of it. Furthermore, plaintiff was made aware that defendant was advise about its staffing needs to satisfy labor demand.
4. Plaintiff colleagues, who are also non-exempt employees of the defendant, confirmed that they are also being awarded compensatory time in lieu of paid overtime for more than a year. In addition, plaintiff was made aware that his colleagues were taking work home, work during their lunches and sometime bring their teenage kids to work to help out in order to satisfy defendant labor demands.
5. On October 31, 2018 plaintiff send complaint via email to upper management (President and General Counsel and VP of Human Resources) to voice his disapproval in writing as it pertain to the polices and working conditions at defendant place of business. Plaintiff meet with upper management on November 5th 2018 to discuss the details of his complaint, and after the discussion, the VP of Human Recourses call plaintiff by name then states "this is my fault", however the President and General Counsel states that he wanted to conduct some internal investigations.
6. On November 7th 2018 the President and General Counsel informed plaintiff via email that he had contacted an attorney to meet with plaintiff and also to conduct a complete investigation. On December 21th 2018 upper management meet with plaintiff to discuss the finding of their attorney's investigation. Upper management state that their attorney advise them that plaintiff complaint was factual, and further states that they were advise that it is unfortunate the way things happened but it's not discrimination, however the overtime situation was not handled properly.
7. On December 21, the VP of Human Resource asked plaintiff for his best estimate of the amount of overtime he was due. Plaintiff advises the VP of Human Resource that he was seeking counsel. On January 2nd 2019 the VP of Human Resources advise plaintiff that their attorney states that plaintiff advise him that he was not paid for 26.25 hours however this is not factual. At no time whatsoever plaintiff states to denfendant or to denfendant attorney that he was due 26.25 hours , in addition plaintiff does not know how the defendant and their attorney arrive at this number.
8. Plaintiff endured an intimidating and retaliatory working environment after his written complaint to upper management. The VP of Human Resource recommend a personal improvement plan (PIP) for plaintiff without just cause; defandant own HR personel agrees that this course of action is only warrant when it is disciplinary. Supervisors reduce plaintiff responsibility in the department and reassign them to temporary staffs and to plaintiff colleagues who continued to take work home.
9. On February 18th 2019 upper management announce that plaintiff department will be closing on May 31, 2019 for relocation overseas. Plaintiff was laid off on February 19th 2019; plaintiff was the first and only employee from his department that was laid off immediately even though the defendant has temporary workers on staff performing the same duties as plaintiff.
10. Defendant was advise in writing about the Fair labor Standard Act (FLSA) violations, defendant accept fault in the matter, couple with defendant retaining an attorney who is an expertise in the realm of employment law yet defendant engages in intentional theft of service evading federal and state payroll taxing authority. On information or believe plaintiff former colleagues who did come forward about the FLSA violations during the investigations did not received the FLSA remedy for back pay (2 years or 3 year for willful FLSA violations).

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Plaintiff prays for judgment against defendant for relief and damages severely in excess of \$75,000 for as follows:

- A. Judgment against defendant that the violations of the FLSA were willful; 29 U.S.C. §201 et seq.
 - B. Plaintiff's unpaid back wages at the applicable overtime rate for each hour worked over forty;
 - C. An equal amount to the wage damages as liquidated damages;
 - D. To the extent that liquidated damages are not awarded, an award of prejudgment interest;
 - E. Judgment against defendant for willful violation of the FLSA anti-retaliation provision U.S.C. §215(a)(3)
 - F. Judgment against defendant for willful violation Whistleblower Protection Act U.S.C. §5851(b)(4)
 - G. Judgment against defendant for intentional infliction of emotional stress; upper management owes plaintiff a duty of care; who are also the gate keepers of defendant corporate policies couple with defendant attorney who is an expertise in the realm of employment law yet they violate the law (the cover up is worst than the crime).
 - H. Judgment against defendant for negligent infliction of emotional stress; upper management and defendant supervisors breach their duty of care.
 - I. Judgment against defendant for tortious termination in violation of public policy (back pay, forward pay and lost of benefits)
 - J. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
 - K. Leave to amend to add claims under applicable state laws; and
 - L. For such further relief as the Court deems just and equitable.
 - M. Judgment against defendant for a reasonable amount for filing fees and legal cost
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V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 05/29/2019

Signature of Plaintiff

Printed Name of Plaintiff

Steve Cunningham
Steve Cunningham

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address